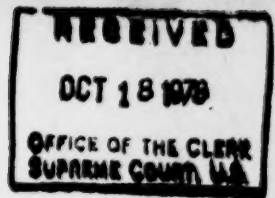


IN THE SUPREME COURT
OF THE UNITED STATES



Term, 1978

NO. 78 - 354

STATE OF NORTH CAROLINA

VS

WILLIE THOMAS BUTLER, A/K/A
"TOP CAT"

MOTION TO PROCEED IN FORMA PAUPERIS

TO THE CLERK OF THE SUPREME COURT OF THE UNITED STATES:

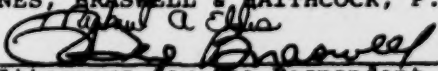
Pursuant to Rule 53 of the Supreme Court Rules and pursuant to 28 U.S.C. § 1915, the Respondent, Willie Thomas Butler, by and through his attorneys, Michael A. Ellis and R. Gene Braswell, hereby moves that he be allowed to proceed in this Court in forma pauperis. Attached hereto is an Affidavit showing that the Respondent comes within the statutory requirements of 28 U.S.C. § 1915.

WHEREFORE, the Respondent prays that he be allowed to proceed in this Court in forma pauperis.

This the 13 day of October, 1978.

BARNES, BRASWELL & HAITHCOCK, P.A.

BY:

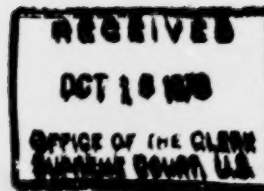

Attorneys for the Respondent

P. O. Box 1582

Goldsboro, North Carolina 27530

Telephone No. 919-735-6420

CERTIFICATE OF SERVICE



This is to certify that the undersigned has this date served a copy of the foregoing Motion to Proceed in Forma Pauperis upon Donald W. Stephens, Assistant Attorney General, at his address at the Department of Justice, P.O. Box 629, Raleigh, North Carolina.

This the 13 day of October, 1978.

BARNES, BRASWELL & HAITHCOCK, P.A.

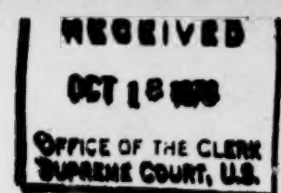
BY: Michael A. Ellis

Attorneys for the Respondent
P. O. Box 1582
Goldsboro, North Carolina 27530
Telephone No. 919-735-6420

IN THE SUPREME COURT
OF THE UNITED STATES

Term, 1978

NO. 78 - 354



STATE OF NORTH CAROLINA

VS

WILLIE THOMAS BUTLER, A/K/A
"TOP CAT"

AFFIDAVIT FOR MOTION TO PROCEED
IN FORMA PAUPERIS

TO THE CLERK OF THE SUPREME COURT OF THE UNITED STATES:

I, the undersigned, do hereby certify that I am the Appellee in the above entitled action in which the State of North Carolina is seeking review of the judgment of the Supreme Court of North Carolina granting me a new trial for failure of the arresting officer to obtain a specific oral waiver of my right to the presence of an attorney during questioning. I believe that I am entitled to redress under 28 U.S.C. § 1915 and Rule 53 of the Supreme Court Rules in that I have not been employed since 1976, and I have been incarcerated in Central Prison in Raleigh, North Carolina since November of 1977. I am presently incarcerated in the Wayne County jail in Goldsboro, North Carolina, awaiting trial in the Superior Court of Wayne County. As a result of my unemployment and incarceration, I am unable to pay the costs or give security for the expense of printing my brief.

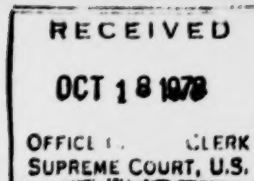
This the 12th day of October, 1978.

Sworn to and subscribed
before me this the 12th
day of October, 1978.

Shirley H. Broadhurst
NOTARY PUBLIC
My commission expires:
Nov 13, 1982

Willie T. Butler
WILLIE THOMAS BUTLER

IN THE SUPREME COURT
OF THE UNITED STATES



Term, 1978

NO. 78 - 354

STATE OF NORTH CAROLINA

VS.

Petitioner

WILLIE THOMAS BUTLER,
A/K/A "TOP CAT"

Respondent

On Petition For Writ of Certiorari
To the Supreme Court of the State of
North Carolina

BRIEF OF RESPONDENT IN OPPOSITION TO
PETITION FOR WRIT OF CERTIORARI

MICHAEL A. ELLIS
R. GENE BRASWELL

BARNES, BRASWELL & HAITHCOCK, P.A.
P. O. BOX 1582
GOLDSBORO, NORTH CAROLINA 27530
919-735-6420

Counsel for Respondent

SUBJECT INDEX

Questions Presented	Page 2
Reasons for Denying the Writ	2
Conclusion	4
Certificate of Service	5

CITATIONS

Cases Cited

Federal

Blackmon v. Blackledge, 396 F. Supp. 296 (W.D.N.C. 1975)	4
Carnley v. Cochran, 369 U.S. 506, 82 X. Ct. 884, 8 L. Ed. 2d 70 (1962).	3
Miranda v. Arizona, 384 U.S. 436, 16 L. Ed. 2d 694, 86 S. Ct. 1602 (1966)	3, 4

IN THE
SUPREME COURT OF THE UNITED STATES
Term, 1978

No. 78 - 354

STATE OF NORTH CAROLINA,

Petitioner

vs.

WILLIE THOMAS BUTLER, A/K/A
"TOP CAT"

Respondent

BRIEF OF RESPONDENT IN OPPOSITION TO
PETITION FOR WRIT OF CERTIORARI

The Respondent, Willie Thomas Butler, respectfully prays that a Writ of Certiorari not be issued to review the judgment and opinion of the Supreme Court of the State of North Carolina entered in this proceeding on June 6th, 1978, granting him the new trial.

QUESTION PRESENTED

Does the prosecution at trial demonstrate an effective waiver of the right to counsel during interrogation when it shows that the individual being interrogated understood his rights and agreed to talk, but that the individual's waiver of the right to counsel was not specifically made after the warnings were given?

REASONS FOR DENYING THE WRIT

A. The Supreme Court of North Carolina in its decision continued to recognize that the circumstances surrounding in-custody interrogation can operate very quickly to overbear the will of one merely made aware of his privilege by his interrogators and

adhered to the specific requirements set forth in this Court's Miranda decision that there can be no effective waiver of the right to counsel during interrogation unless specifically made after the warnings have been given.

In Miranda v. Arizona, 384 US 436, 16 L.Ed. 2d 694, 86 S.Ct.1602 (1966), the United States Supreme Court said:

"An individual need not make a pre-interrogation request for a lawyer. While such request affirmatively secures his right to have one, his failure to ask for a lawyer does not constitute a waiver. No effective waiver of the right to counsel during interrogation can be recognized unless specifically made after the warnings we here delineate have been given (Emphasis added.)

* * * *

An express statement that the individual is willing to make a statement and does not want an attorney followed closely by a statement could constitute a waiver. But a valid waiver will not be presumed simply from the silence of the accused after warnings are given or simply from the fact that a confession was in fact eventually obtained

* * * *

After such warnings have been given, and such opportunity afforded him, the individual may knowingly and intelligently waive these rights and agree to answer questions or make a statement. But unless and until such warnings and waiver are demonstrated by the prosecution at trial, no evidence obtained as a result of interrogation can be used against him."

In short, the record just does not show that the Respondent declined counsel after he was informed of his right to have counsel present. As to this specific point of the declining of counsel, the record is silent and the presumption of a waiver from a silent record is impermissible. Carnley v. Cochran, 369 U.S. 506, 8 L. Ed. 2d 70, 82 S.Ct. 884 (1962). In that case in which the record did not show that the trial judge offered and that the accused declined counsel, this Court clearly pointed out that there must be an allegation and evidence which show that the accused was offered counsel but intelligently and understandingly rejected the offer. The Respondent contends that the Miranda decision clearly holds that the rejection of the offer of counsel or the waiver of counsel must be specifically made and can not be inferred merely from the fact that he was willing to answer questions after acknowledging

that he understood what the "Advice of Rights Form" meant.

A review of the three paragraphs quoted above from the Miranda decision and a comparison of them to the facts of this case clearly indicates that there was not an effective waiver of the right to counsel by the accused since the waiver was not specifically made and can not be presumed from the facts that the accused was silent as to the specific question of whether he wanted counsel present and that the accused eventually made a statement.

Finally, the Respondent contends that the case of Blackmon v. Blackledge, 396 F. Supp 296 (W.D.N.C. 1975) cited in the petitioner's brief is in direct conflict with the Miranda decision in that it clearly infers a waiver of counsel from the fact that the accused submits to questioning and from the fact that he fails to ask for a lawyer. All of the cases cited by the petitioner from Federal Circuit Court and the Supreme Courts of other states seemingly violate the express language of the original Miranda decision that there can be no effective waiver of the right to counsel during interrogation unless the waiver is specifically made after the warnings have been given.

CONCLUSION

The Respondent respectfully prays the Court to deny the Petition for Certiorari and allow a decision to stand that affords rights that are indispensable to the protection of the Fifth Amendment privilege. Undoubtedly, some people accused of crime would, in fact, understand the right to have counsel present by reading such a form, but, undoubtedly, there are many who would not understand this right. The case at hand happens to involve an accused who did not finish high school and the only way to insure the equal application of the Fifth Amendment privilege is to require that all suspects make a specific oral or written

waiver of their right to counsel during interrogation.

Respectfully submitted,

BARNES, BRASWELL & HAITHCOCK, P.A.

BY: Richard A. Ellis

Attorneys for Respondent

P. O. Box 1582

Goldsboro, North Carolina 27530

Telephone No. 919-735-6420

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing Brief of Respondent in Opposition to Petition for Writ of Certiorari has this date been served upon Donald W. Stephens, Assistant Attorney General, by depositing a copy of the same in the United States mail, first class postage prepaid, addressed to:

Mr. Donald W. Stephens
Assistant Attorney General
P. O. Box 629
Raleigh, North Carolina 27602

This the 11 day of October, 1978.

BARNES, BRASWELL & HAITHCOCK, P.A.

BY: Richard A. Ellis

Attorneys for Respondent

P. O. Box 1582

Goldsboro, North Carolina 27530

Telephone No. 919-735-6420